

# FINAL REPORT ON STATUS OF IMPLEMENTATION OF MOBILE NOW ACT SECTION 606(c) REQUIREMENTS

## INTRODUCTION

On March 23, 2018, the Consolidated Appropriations Act 2018 was signed into law, which provided appropriations through fiscal year 2018.<sup>1</sup> Division P, the RAY BAUM’s Act of 2018, contains several Titles that provide directions regarding communications, networks, mobile service, Wi-Fi, and broadband.<sup>2</sup> Title VI of Division P, the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act), has 23 sections that specifically focus on mobile or fixed wireless broadband spectrum, broadband infrastructure, and communications facility installations.<sup>3</sup>

Section 606 of the MOBILE NOW Act contains several provisions intended to facilitate the deployment of communications facility installations on federal property. Section 606(c), in particular, directs the National Telecommunications and Information Administration (NTIA) to coordinate with the Department of the Interior (DOI), the Department of Agriculture (USDA), the Department of Defense (DOD), the Department of Transportation (DOT), the Office of Management and Budget (OMB), and the General Services Administration (GSA) to develop recommendations for streamlining processes when considering applications to locate broadband facilities on federal property within two years from the date of enactment (March 23, 2020).<sup>4</sup>

The MOBILE NOW Act directs NTIA, within two years of developing these recommendations to streamline application processes, to report to Congress on the status of their implementation and any process improvements resulting from such recommendations.<sup>5</sup> In 2020, NTIA delivered the first report to Congress, as directed, which outlined measures being taken to streamline Federal permitting of broadband projects.<sup>6</sup> This report follows up on the measures described in the NTIA 2020 report to Congress and the progress made to implement the provisions found in the MOBILE NOW Act.

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<sup>1</sup> Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348 (2018), *available at* <https://www.congress.gov/115/plaws/publ141/PLAW-115publ141.pdf>.

<sup>2</sup> *Id.* at Division P, tit. VI, MOBILE NOW Act, 132 Stat. 1097.

<sup>3</sup> Section 606(d) of the MOBILE NOW Act defines a communications facility installation as: “(A) any infrastructure, including any transmitting device, tower, or support structure, and any equipment, switches, wiring, cabling, power sources, shelters, or cabinets, associated with the licensed or permitted unlicensed wireless or wireline transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds; and (B) any antenna or apparatus that—(i) is designed for the purpose of emitting radio frequency; (ii) is designed to be operated, or is operating, from a fixed location pursuant to authorization by the Federal Communications Commission or is using duly authorized devices that do not require individual licenses; and (iii) is added to a tower, building, or other structure.” 47 U.S.C. § 1455(d)(1).

<sup>4</sup> MOBILE NOW Act § 606(c)(2)(A)-(B), 132 Stat. 1103.

<sup>5</sup> *Id.* at § 606(c)(2)(C).

<sup>6</sup> See National Telecommunications and Information Administration (NTIA), *Implementation of Mobile Now Act Section 606(c) Requirements* (Oct. 2020) (MOBILE NOW Report), *available at* <https://www.ntia.doc.gov/report/2020/ntia-report-section-606c-mobile-now-act>.



## BACKGROUND

Prior to the passage of the MOBILE NOW Act, the American Broadband Initiative (ABI) was established to stimulate increased private investment in broadband infrastructure and services to fill broadband connectivity gaps in America. Since its formation, the ABI has been working diligently to fulfill its mission of ensuring that government processes are clear and responsive to stakeholders, that government assets provide the greatest possible benefit to the public, and that the government is performing its duties as a steward of taxpayer funds. In February 2019, the ABI published its Milestones Report, outlining a vision for how the federal government can encourage the expansion of broadband access and actions that agencies are taking to increase private-sector investment in broadband. On June 25, 2020, the ABI released a Progress Report to provide an update on its work to date in fulfilling the commitments described in the Milestones Report.<sup>7</sup> The ABI is comprised of two major workstreams: Streamlining Federal Permitting (SFP) and Maximizing the Impact of Federal Funding. Each of these workstreams is led by and comprised of agencies with particular equities and expertise in that area.

The ABI's Streamlining Federal Permitting workstream is striving to make government processes clear, transparent, and responsive to stakeholders. By reducing permitting delays, minimizing paperwork, and designating clear federal points of contact, federal agencies will enable broadband providers to focus on building broadband networks more quickly. The Department of Homeland Security (DHS) and DOI co-chair this workstream. The other workstream member agencies include: USDA, Department of Commerce (NTIA and the First Responder Network Authority (FirstNet Authority)), DOD, DOT, GSA, OMB, the Department of Veterans Affairs, the Advisory Council on Historic Preservation (ACHP), and the Council on Environmental Quality (CEQ). The Federal Communications Commission (FCC), as an independent regulatory agency, participates in this workstream as a consulting member.

To date, the ABI's Streamlining Federal Permitting Workstream has served as the vehicle to implement section 606(c) of the MOBILE NOW Act because the agencies enumerated in the statute and tasked with developing recommendations are all members of this workstream.

Pursuant to the MOBILE NOW Act's provisions, the Streamlining Federal Permitting Workstream focused on the following elements to develop the recommendations called for under section 606(c):

1. Procedures for tracking broadband facility applications;
2. Methods to reduce application review and approval timelines;
3. Policies expediting renewals of easements, licenses or other authorizations for broadband facility installations; and

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<sup>7</sup> On February 13, 2019, the ABI was launched with the release of the Milestones Report. *See American Broadband Initiative (ABI), Milestones Report* (Feb. 2019), *available at*: [https://www.ntia.doc.gov/files/ntia/publications/american\\_broadband\\_initiative\\_milestones\\_report.pdf](https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf). On June 25, 2020, the ABI released a Progress Report to provide an update on its work to date in fulfilling the commitments described in the Milestones Report. *See ABI, Progress Report* (June 2020), *available at*: [https://www.ntia.doc.gov/report/2020/ABI\\_Progress\\_Report](https://www.ntia.doc.gov/report/2020/ABI_Progress_Report).



4. Policies prioritizing or streamlining construction permits in previously disturbed rights-of-way.

Using these elements as a guide, the Streamlining Federal Permitting Workstream developed the following recommended agency actions, which were shared in the MOBILE NOW Report, which NTIA transmitted to Congress on October 27, 2020.<sup>8</sup> Some of these activities have already been implemented or are currently in progress as noted below. The Streamlining Federal Permitting Workstream has continued to examine the feasibility of implementing the remaining recommended actions and continues to monitor the status of these actions. NTIA received updates through the workstream as to the process improvements.

### **Updates to Agency Actions Recommended in 2020 MOBILE NOW Report**

#### **1. Procedures for the tracking of applications**

- a) Executive Order 13821, Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America, requires GSA to collect data and compile reports on Agency permitting timeframes, including the number of applications received, the number approved, the number rejected, the basis for any rejection, and the number of working days each application was pending before being approved or rejected. Since December 2018, GSA has submitted thirteen quarterly reports to OMB. The most recently submitted report for Q4 FY 2021 (submitted in January 2022) featured several key improvements to enhance readability, such as, redesigning the table of contents to include a “List of Figures” and a “List of Appendices” to improve the organization within the report, and the inclusion of two new graphs to convey data. It is also important to note that in FY 2021, 530 applications for broadband siting permits were approved by federal property managing agencies with an average time below the 270-day statutory requirement contained in the MOBILE NOW Act. GSA and the workstream members continuously work to improve the data collection process and facilitate the tracking of permit applications.
- b) On December 20, 2018, the Agriculture Improvement Act of 2018 (the Farm Bill) became law.<sup>9</sup> Title VIII, Subtitle G, Section 8705, of the Farm Bill directs the USDA’s Forest Service (USFS) to issue regulations that streamline the process for evaluating applications for communications facilities on National Forest System (NFS) lands. As a result of the Farm Bill, USFS amended its regulations at 36 CFR § 251.54(g)(4) in April 2020, to add a new subparagraph to its regulations establishing a process for tracking applications for communications uses that: (a) identifies the number of applications received, approved, and denied; (b) for applications that are denied, describing the reasons for the denial; and (c) describing the amount of time between receipt of an application and grant or denial of the application.<sup>10</sup>

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<sup>8</sup> MOBILE NOW Report, *supra* note 6.

<sup>9</sup> Agriculture Improvement Act of 2018, Pub. L. 115-334, 132 Stat. 4490 (2018), *available at* <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

<sup>10</sup> *See* 36 CFR § 251.54(g)(4)(iii) (2020).



- c) USFS revised its directives at Forest Service Handbook (FSH) 2709.11, Chapter 90 in October 2020, to establish responsibility for a tracking system for communications use applications and to establish procedures for inputting data needed to track communications use applications.
- d) GSA created a national antenna application-tracking sheet that it distributed to its regional offices for use in January 2020. The tracking sheet measures the amount of time it takes for GSA regions to reject or approve and then process antenna-siting applications, ensuring compliance with the 270-day statutory requirement for processing of telecommunications applications.
- e) The Federal Permitting Improvement Steering Council (FPISC) maintains the Federal Infrastructure Permitting Dashboard, an online tool for Federal agencies, project developers, and interested members of the public to track the Federal government’s environmental review and authorization process for large or complex infrastructure projects, part of a government-wide effort to improve coordination, transparency, and accountability.<sup>11</sup> SFP members have explored the feasibility of leveraging this online tool to track applications for siting communications facilities on federal property. Further coordination with DOT and the Federal Permitting Improvement Steering Council (FPISC) leadership is needed to determine how best to implement this recommendation.
- f) DOI’s Bureau of Land Management (BLM) is taking steps to update its LR2000 tracking system and transition to a new system, the Mineral and Lands Record System (MLRS). Additionally, on April 14, 2020, BLM launched an online system for the filing of a Standard Form (SF)-299 for communications uses that will further assist in the tracking of applications. SFP members will explore the feasibility of expanding an application tracking system to other DOI bureaus and other federal property-managing agencies.

**2. Methods to reduce the amount of time between the receipt of an application and the issuance of a final decision on an application (270 days or less)**

- a) Establish the SF-299 as the Common Form – In February 2020, USFS, working with GSA and other SFP workstream members, obtained OMB approval of revisions to the SF-299 to make it the common application form used by the private sector to seek permission to deploy communications infrastructure on federal property. The SF-299 is the standard form to be used by the federal property managing agencies that use an application to initiate the siting process, including DOI and GSA. The form can be accessed on the USFS website and NTIA’s BroadbandUSA website.<sup>12</sup>

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<sup>11</sup> See Federal Infrastructure Projects, *Permitting Dashboard*, available at: [www.permits.performance.gov](http://www.permits.performance.gov). The FPISC dashboard is administered and maintained by the Department of Transportation.

<sup>12</sup> See USFS, *Special Uses – Communications Uses*, available at: [https://www.fs.fed.us/specialuses/special\\_comm.shtml](https://www.fs.fed.us/specialuses/special_comm.shtml); see also BroadbandUSA, *Federal Permitting*, available at: <https://broadbandusa.ntia.doc.gov/resources/federal/federal-permitting>.



- Agencies believe that stakeholders have benefited from having a common application form that all agencies authorizing communications facilities or uses on federal assets accept by reducing costs and processing times. By using the common form, the application information provided by the stakeholders is the same for all agencies, providing government-wide consistency.
  - Agencies continue to further improve their processes by exploring methods to accept the SF-299 electronically.
- b) Federal property-managing agencies will establish the 270-day standard per the MOBILE NOW Act.
- In 2018, USFS amended its directives at FSH 2709.11, Chapter 90 to provide that within 270 days of acceptance of an application for a new communications facility or communications use in or on a facility managed by the USFS, the authorized officer must grant or deny the application and notify the applicant in writing of the grant or denial. In 2020, USDA issued a Final Rule to amend USFS regulations to integrate the 270-day timeframe for responding to applications for a new communications facility or communications use in or on a facility managed by the USFS with the requirements in USFS directives.<sup>13</sup>
  - BLM proposes changing its rule to implement the 270-day customer service standard consistent with the MOBILE NOW Act. The proposed rule is planned to be published in the *Federal Register* during the third quarter of 2022.
  - BLM has established training opportunities for its realty staff to assist with processing broadband projects on public lands. Additionally, BLM is developing training opportunities for its stakeholders regarding the submittal of complete SF-299 applications to site broadband communications facilities.
- c) GSA updated the standardized U.S. Government Lease of Real Property for Communications Space in Fiscal Year 2020, including adding references to the term “Communications Facility Installation” as defined in the MOBILE NOW Act. GSA posted the revised templates to the telecommunications page of its website.<sup>14</sup>
- d) The federal property-managing agencies explored the feasibility of accepting electronic filings of the SF-299, including attachments.
- BLM is currently drafting a rule change to accept the electronic filing of the SF-299 application.
  - BLM is currently drafting a rule change to require the inclusion of geographic information system (GIS) information with applications.

<sup>13</sup> See USFS Streamlining Final Rule, 85 Fed. Reg. 19660 (Apr. 8, 2020).

<sup>14</sup> See GSA, *Wireless Telecommunications Installation*, available at: <https://www.gsa.gov/real-estate/real-estate-services/for-businesses-seeking-opportunities/wireless-telecommunications-installation>.



- e) USFS collected, verified, and mapped its communications sites and publicly released its Communications Sites Map Viewer in October 2019 for use by internal and external customers. This mapping tool provides basic information on USFS communications sites, including their geographical location, site designation, and local contact information.
  - o This information will enable the public and stakeholders to locate communications sites on NFS lands and complete an initial feasibility assessment prior to submitting a proposal and application to site facilities on NFS lands.
  - o USFS published the dataset to the Forest Service Geodata Clearinghouse.<sup>15</sup>

### **3. Policies to expedite renewals of an easement, license, or other authorization to locate communications facility installations on federal lands**

- a) Federal property-managing agencies have considered the feasibility of allowing automatic renewals unless changed conditions or circumstances exist.
- b) BLM is currently drafting a rule requiring the agency to notify the applicant of renewal decisions within 60 days prior to the end of the current authorization. Additionally, when a renewal application is filed timely, and the authorization is in compliance with all of the terms and conditions, the authorization would remain valid until the agency has made a decision on the renewal application.
- c) BLM has allocated additional appropriated funding to the various State Offices to assist with broadband deployment.
- d) Federal property-managing agencies have considered standardizing longer terms, e.g., 25 to 30 years, for communications use authorizations.
  - o BLM is drafting a proposed rule for public comment that would establish a standard 30-year term.
  - o USFS amended its regulations at 36 CFR § 251.54(g)(5) and revised its directives at FSH 2709.11, Chapter 90, to establish a term of 30-years for communications use authorizations, unless case-specific circumstances warrant a shorter term.<sup>16</sup>

### **4. Policies prioritizing or streamlining construction permits in previously disturbed rights-of-way**

- a) Federal property-managing agencies apply National Environmental Policy Act (NEPA) categorical exclusions to streamline and expedite environmental reviews when warranted. Categorical exclusions are categories of actions that the agency has determined do not have a significant impact on the environment absent extraordinary circumstances. The use of categorical exclusions can shorten the timeframe for environmental analyses compared with the development of more

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<sup>15</sup> See USFS, *Download National Datasets*, available at: <https://data.fs.usda.gov/geodata/edw/datasets.php?xmlKeyword=communications+sites>.

<sup>16</sup> See *id.* at 19661-62.



resource-intensive Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

- Agencies develop categorical exclusions as part of their NEPA implementing procedures based on their experience and expertise. CEQ maintains a comprehensive list of federal agencies' categorical exclusions.<sup>17</sup>
  - CEQ is working with several federal agencies to develop broadband-related categorical exclusions.
- b) On February 1, 2018, the FirstNet Authority updated its NEPA implementing procedures and revised its list of categorical exclusions and extraordinary circumstances. This will ensure that such procedures align with the FirstNet Authority's statutory mission and activities related to the deployment of the nationwide public safety broadband network and assist FirstNet in complying with NEPA, as well as CEQ and FCC regulations. As both an independent federal authority within NTIA and a licensee of the FCC, the FirstNet Authority must satisfy its own NEPA obligations as well as comply with FCC-promulgated NEPA procedures. These revisions will facilitate more efficient, effective, and timely NEPA reviews by simplifying and streamlining duplicative requirements.
- c) In November 2020, USFS amended its NEPA regulations at 36 CFR Part 220 to increase efficiency in its environmental analysis while meeting NEPA's requirements and fully honoring its environmental stewardship responsibilities.<sup>18</sup>
- The amended rule facilitates reliance on a categorical exclusion for special use authorizations, including authorizations for communications uses.
  - The amended rule expands the categorical exclusion for special use authorizations from 5 to 20 acres and removes the qualifying words "contiguous" and "minor" in reference to additional facilities.
  - The amended rule establishes a new categorical exclusion that does not require a project or case file and decision memo for reissuance of special use authorizations, which will simplify reliance on a categorical exclusion.
- d) USFS regulations at 36 CFR § 251.54(g)(4) that pre-date the MOBILE NOW Act provide for streamlining evaluation of applications for communications uses on previously disturbed NFS lands.
- USFS may evaluate groups of applications for similar uses having minor environmental impacts with one analysis and approve them in one decision.<sup>19</sup>
- e) Section 607 of the Mobile Now Act, Broadband Infrastructure Deployment, required the Secretary of Transportation to promulgate regulations to facilitate broadband infrastructure deployment. The Federal Highway Administration

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<sup>17</sup> See NEPA, *Categorical Exclusions*, available at: <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>.

<sup>18</sup> See USFS NEPA Compliance Final rule, 85 Fed. Reg. 73620 (Nov. 19, 2020).

<sup>19</sup> See Streamlining, *supra* note 11 at 19666.



(FHWA) began the rulemaking process in June of 2019 to modify 23 CFR part 645—Utilities to include the Section 607 requirements. The rule was finalized in December of 2021 with an Effective date of March 3, 2022. In general, the Final Rule requires state DOTs to:

- Identify a broadband utility coordinator;
- Establish a process to register broadband entities;
- Establish a process to electronically notify such entities of the Statewide Transportation Improvement Program (STIP) on an annual basis and provide additional notifications as necessary to achieve the goals of this section; and
- Coordinate these initiatives with telecommunication and broadband plans and State and local transportation and land use plans, including strategies to minimize repeated excavations.

## CONCLUSION

With the passage of the Infrastructure Investment and Jobs Act (IIJA), which authorized \$65 billion in new federal funding dedicated to broadband, it is imperative that federal permitting policies and procedures are effective, efficient, transparent, and streamlined to the greatest extent possible. While NTIA produced this report to provide an update on actions taken by agencies, we believe that leveraging the Federal Permitting Improvement Steering Council could greatly assist in addressing remaining broadband permitting challenges. FPISC includes senior agency leadership and is tasked by Congress to identify root causes in pain points, recommend policies and guidance to resolve the issues, and provide an escalation and coordination mechanism. The Department of Commerce, through its participation in FPISC and the Infrastructure Implementation Task Force, is committed to supporting these efforts to help realize the Biden-Harris Administration’s goal of closing the digital divide and ensuring that all Americans have access to reliable, affordable, high-speed broadband.

